No. 95-401

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

IN THE INTEREST OF H.S.H.-K.

ELSBETH KNOTT,

Petitioner,

vs.

SANDRA LYNN HOLTZMAN,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Wisconsin

GUARDIAN AD LITEM'S BRIEF IN OPPOSITION

LINDA S. BALISLE
Counsel of Record
BALISLE & ROBERSON, S.C.
Guardian ad Litem for H.S.H.-K.
217 South Hamilton Street
Suite 302
P.O. Box 870
Madison, Wisconsin 53701-0870
(608) 259-8702

7592
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

QUESTIONS PRESENTED

The Wisconsin Supreme Court in *In re Custody of H.S.H.-K.*, 193 Wis. 2d 649, 533 N.W. 2d 419, 421 (1995) (footnotes omitted) concluded that a third party has standing to request visitation with a child over the objections of the biological parent if the third party establishes a significant triggering event justifying state intervention and if the third party meets four requirements:

> (1) that the biological or adoptive parent consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child;
>
> (2) that the petitioner and the child lived together in the same household;
>
> (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation;
>
> (4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

The question presented in the Petition for Writ of Certiorari is whether the rule of standing adequately protects and balances the constitutional rights and interests of the biological parent, the child and the person who has had a parent-like relationship with the child.

LIST OF PARTIES

Petitioner, Elsbeth Knott, (hereinafter "Knott") is the biological mother of H.S.H.-K.

Respondent, Sandra Lynn Holtzman, (hereinafter "Holtzman") is the person with whom Knott had a committed relationship for over ten years and is a person H.S.H.-K. considers to be one of his parents.

The best interest of H.S.H.-K. is represented by the Guardian ad Litem, Attorney Linda S. Balisle.

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GUARDIAN AD LITEM'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Guardian ad Litem respectfully requests that this Court deny the Petition for a Writ of Certiorari to the Wisconsin Supreme Court submitted by Knott. The Guardian ad Litem joins in Holtzman's Brief in Opposition to Petition for a Writ of Certiorari.

OPINIONS BELOW

The Wisconsin Supreme Court affirmed in part, and reversed in part, the trial court's order dismissing Holtzman's petition seeking custody of or visitation rights to H.S.H.-K. Specifically, the Wisconsin Supreme Court affirmed the trial court's decision dismissing the petition for custody, reversed the trial court's decision dismissing the petition for visitation, and remanded the case to the trial court for further proceedings consistent with its decision. The Wisconsin Supreme Court's opinion is reported in 193 Wis. 2d 649, 533 N.W.2d 419 (1995) and reproduced in the Appendix to Knott's Petition. Pet. App. pp. 1a-141a.

The opinion of the trial court is unreported, but reproduced in the Appendix to Knott's Petition. Pet. App. pp. 142a-175a.

STATEMENT OF THE CASE

The Guardian ad Litem joins in Holtzman's Statement of the Case.

REASONS FOR DENYING THE WRIT

I.

KNOTT MISREPRESENTS THE WISCONSIN SUPREME COURT'S ACTION.

Knott asserts that the Wisconsin Supreme Court's decision in the case below "totally ignores the biological parent's rights and fitness as a parent" (Petition p. 9) and that it "has granted an unrelated biological stranger the right to interfere with an intact family unit." (Petition p. 10.)

Contrary to Knott's representations, the Wisconsin Supreme

Court carefully balanced the rights of a biological parent and the best interest of the child in establishing a rule to determine who has standing in Wisconsin to request visitation of a child. *In re Custody of H.S.H.-K.*, 193 Wis. 2d 649, 533 N.W. 2d 419, 435. The Wisconsin Supreme Court expressly protected the biological parent in several ways.

First, the court required that the person requesting visitation have a parent-like relationship with the child. *In re Custody of H.S.H.-K.*, 193 Wis. 2d 649, 533 N.W. 2d at 421, 435-436. Second, the establishment of that relationship must have been with the consent of the parent. *Id.* Third, the person requesting visitation must have actually lived with the child in the same household. *Id.* Fourth, the person requesting visitation must have assumed obligations of parenthood; and fifth, the person must have been in this parental role long enough to have established a bonded, dependent relationship with the child. *Id.*

One of the most important protections of the biological parent's rights is the requirement that the biological parent consent to and foster this relationship. This is not a relationship that is being imposed on the parent by the state. Rather, this four-prong test provides guidance to trial courts who must address the effects on the child of ending such relationships.

The Wisconsin Supreme Court's decision in this case simply allows trial courts to consider how best to protect children when these bonded relationships, created with the consent of the biological parent, are subsequently threatened by the biological parent. Such a narrow rule does not inappropriately interfere with the biological parent's rights of due process or equal protection. It affords a measure of protection to the child's parent-like relationship with another adult in the household, in circumstances where a parent facilitates the development of that relationship.

The Wisconsin Supreme Court, contrary to Knott's statements, does not require that visitation be ordered. The court's decision simply allows trial courts to order some visitation in some cases based on the facts presented to the trial court.

II.

IT IS IN THE BEST INTEREST OF H.S.H.-K. TO ALLOW THE WISCONSIN SUPREME COURT'S DECISION TO STAND.

It is in this child's best interest to continue to have a relationship with Holtzman because he views her as his parent, and his relationship was openly fostered and consented to by Knott. *In re Custody of H.S.H.-K.*, 193 Wis. 2d 649, 533 N.W.2d at 421-422. In an interview with this Guardian ad Litem at the beginning of this action, before any visitation schedule had been established, H.S.H.-K. said the following:[1]

(1) that his last name was "Holtzman-Knott";

(2) that he believes Holtzman is his parent;

(3) that he knows that his mother, Knott, does not consider Holtzman his parent, but he disagrees with her;

(4) that he would like to visit Holtzman, participate in various activities with her, spend the night at her house and call her on the phone;

(5) he informed me of Holtzman's telephone number and address without prompting;

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1. Wis. Stat. §767.045(4)(1993-1994) requires Guardians ad Litem to report the wishes of the child to the trial court.

(6) he enjoyed his time with Holtzman after she and his mother ended their relationship, felt safe with her and looked forward to seeing her;

(7) he would like to see his Aunt Sherry Holtzman, his godmother;

(8) he misses Holtzman and her extended family;

(9) he knows that his mother would be upset if he saw Holtzman, but he wants to see her anyway; and

(10) he does not consider anyone other than Holtzman and Knott to be his parents. (Excerpt of Brief of Guardian ad Litem, herein reproduced in Guardian ad Litem's Appendix, pp. 1a-3a.)

The child's point of view alone is insufficient to meet the four-pronged standing test created by the Wisconsin Supreme Court. The information from the child is simply additional evidence related to whether or not there is a parent-like relationship between the child and the person requesting visitation.

Ending this bonded relationship would plainly harm this child. Wisconsin recognizes the importance of contact between children and their parents by viewing this contact as an entitlement of the child. Wis. Stat. §767.24(4)(b)(1993-1994) provides that a "child is **entitled** to periods of physical placement with both parents . . ." (emphasis supplied.) Knott would deny this entitlement to this child, because she and Holtzman cannot legally marry. The Wisconsin Supreme Court acted within its authority and zone of constitutionality by rejecting this analysis and instead focusing on the child's relationship with this adult. The court made no statement regarding whether it approves of

non-marital families or any particular type of family. It simply established a method of addressing this very real relationship with the child that had been created and fostered by the biological parent.

If, as Knott asserts, Holtzman really was not part of their family and did not have a parent-like relationship with H.S.H.-K., then Holtzman will be unable to meet the standing test. Even if Holtzman does meet the standing test, the trial court must order a visitation schedule that is in the best interest of this child. There is no one standard schedule that is being imposed on parents in these cases.

The family courts and juvenile courts in Wisconsin are filled with children who have not adequately bonded to a parent. Considerable resources are expended to address the damage resulting from this lack of bonded relationships. The Wisconsin Supreme Court's decision in this case simply allows trial courts one small vehicle to protect the parental bonds that exist for the children brought before them. Surely, states have at least this much authority to address the needs of the children within their jurisdiction.

CONCLUSION

For the foregoing reasons, the Guardian ad Litem respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted this 11th day of October, 1995.

LINDA S. BALISLE
Counsel of Record
BALISLE & ROBERSON, S.C.
Guardian ad Litem for H.S.H.-K.
217 South Hamilton St., Suite 302
P.O. Box 870
Madison, Wisconsin 53701-0870
(608) 259-8702

APPENDIX A — EXCERPT OF BRIEF OF GUARDIAN AD LITEM

STATE OF WISCONSIN CIRCUIT COURT
COUNTY OF DANE
FAMILY COURT BRANCH I

Case No. 93-FA-1668

Unclassified: 40803

In Re the Custody of:

HARRISON SAMUEL HOLTZMAN KNOTT

SANDRA LYNNE HOLTZMAN,

Petitioner,

and

ELSBETH KNOTT,

Respondent.

I. STATEMENT OF FACTS

For purposes of the Motion for Summary Judgment, the Guardian ad Litem accepts the facts as alleged by the petitioner Sandra Holtzman as true and does not repeat any of those facts here.

The independent facts obtained by this Guardian ad Litem,

which can be confirmed by Penny Majors, the minor child's counselor, and by this Guardian ad Litem's report of the child's wishes as required by Wis. Stat. §767.045(4), are set forth herein.

These facts were obtained in an interview by this Guardian ad Litem of the minor child in the presence of his counselor, Penny Majors:

1. The minor child is 4 and 3/4 years old.

2. When asked his name, the minor child stated that his last name was "Holtzman-Knott."

3. The minor child believes that Sandra Holtzman is his parent.

4. He knows that his mother, Elsbeth Knott, does not consider Sandra his parent, but he disagrees with her.

5. He would like to visit Sandy, participate in various activities with her, spend the night at her house and call her on the phone.

6. The minor child informed the Guardian ad Litem of Sandra's telephone number and address without prompting.

7. He enjoyed his time with Sandra after she and his mother ended their relationship, felt safe with her and looked forward to seeing her.

8. He would like to see his Aunt Sherry (Holtzman), his godmother, and would like to be a doctor like she is.

Appendix A

9. He misses Sandy and her extended family.

10. He knows that his mother would be upset if he saw Sandy, but he wants to see her anyway.

11. He believes that he and his mother could discuss these issues in sessions with his counselor Penny Majors.

12. He does not consider anyone other than Sandra Holtzman and Elsbeth Knott to be his parents.

These facts, in addition to those set forth in the petitioner's brief, form the basis of the legal arguments set forth herein.